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AUG 14 2008

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT of CALIFORNIA

JOSEPH VICTOR LAGANA
Plaintiff / Petitioner

Case No. 4:08-cv-03392-CW

Vs.

Second
Amended Complaint

SAN FRANCISCO POLICE
DEPARTMENT & CITY AND
COUNTY OF SAN FRANCISCO
Defendant / Respondent

Original complaint filed in Superior Court
May 29, 2008

Plaintiff's Second Amended Complaint and Causes of Action

- 1 Plaintiff Joseph Victor Lagana hereby complains of defendants "San Francisco Police
- 2 Department and "City and County of San Francisco" and alleges as follows.
- 3 Plaintiff Joseph Victor Lagana is an individual and a resident of Los Angeles County
- 4 Defendant "San Francisco Police Department is a law enforcement agency
- 5 Defendant "City and County of San Francisco is a municipality
- 6 Some of the true names of the defendant's agents are unknown at this time and
- 7 plaintiff will amend his complaint if needed accordingly
- 8 At all relevant times said defendants were acting within the course and scope of their
- 9 employment as officers, sergeants, captains, and / or civilian employees policy makers
- 10 and representatives of the City of San Francisco and the wrongful acts hereinafter
- 11 described flow from their exercise of their authority.
- 12 At all times relevant, defendant "San Francisco Police Department" were acting under
- 13 color of law , to wit, under the color of the statues, ordinances, regulations, policies,
- 14 customs, practices, and usages of defendant "City and County of San Francisco" and the
- 15 State of California.
- 16 Plaintiff has complied with all notice requirements including timely presenting a claim
- 17 for damages against the "City and County of San Francisco" which was later denied by
- 18 defendant "City and County of San Francisco"

Complaint

Joseph Victor Lagana vs. S.F.P.D. & C.C.S.F.
Case No. 4:08-CV-03392-CW

General Factual Background,

Causes of Action – Intentional Tort, Fraud, and General NegligenceI. Intentional Tort

18 Plaintiff Joseph Lagana was protesting in-front of "Ross Stores" location on 4th & Market
 19 St. in San Francisco, CA on or around May 15th 2008. S.F.P.D. officer "L. Cueba"
 20 grabbed the plaintiff by his sweater with full force and told the plaintiff to leave the area
 21 of 4th and Market St. and cease his protesting of Pleasanton Police Department. Plaintiff
 22 stated that he is on a public sidewalk and he has a right to protest which is protected by
 23 the 1st Amendment of the U.S. Constitution and asked officer "L. Cueba" to let go of him
 24 and his sweater. Officer "L. Cueba" stated "I am a cop!" and refused to let go. Plaintiff
 25 stated he would defend himself regardless, and that officer "L. Cueba" had committed
 26 assault against him. According to C.P.C. 240., "An assault is an unlawful attempt,
 27 coupled with a present ability, to commit a violent injury on the person of another." This
 28 was a joint effort of "Ross Stores" and S.F.P.D., and upon discovery "Ross Stores" may
 29 become an added defendant. Plaintiff Joseph Victor Lagana protested at this location on
 30 other dates and was harassed by the defendant's agents, and the most remarkable is the
 31 day officer "L. Cueba" assaulted the plaintiff and violated his 1st Amendment right. The
 32 plaintiff's right to protest was violated and has taken action according to USC **Section**
 33 **1983. Civil action for deprivation of rights.**
 34 Plaintiff has also been frequently threatened, harassed, and stalked by unknown S.F.P.D.
 35 officers Plaintiff plans on filing a Pitchess motion in order to find out who these officers
 36 were. Plaintiff was falsely arrested on 4 occasions by the S.F.P.D. and plaintiff alleges
 37 that their action was in retaliation to plaintiff filing a lawsuit against the S.F.P.D. because
 38 all arrests occurred after the filing of the original complaint in the San Francisco Superior
 39 Court (their case no. CGC-08-475803).
 40 Plaintiff needs to commit discovery to get more details, however officers "Toomey and
 41 Reyes" were arresting officers in one occasion and on the scene in almost every occasion
 42 of the plaintiff's arrests
 43 According to CPC 146. "Every public officer, or person pretending to be a public
 44 officer, who, under the pretense or color of any process or other legal authority, does any
 45 of the following, without a regular process or other lawful authority, is guilty of a
 46 misdemeanor:
 47 (a) Arrests any person or detains that person against his or her will.
 48 (b) Seizes or levies upon any property."
 49 The plaintiff was inconvenienced, lost his job, missed 2 flights, and still has property yet
 50 to be returned by the S.F.P.D., including 26 photographs that are evidence in this case.
 51 At time of the third arrest of Joseph Victor Lagana, plaintiff alleges that S.F.P.D. officer
 52 "L. Bertrand" Star number 414, falsely arrested, assaulted, battered, and attempted
 53 murder on the plaintiff by means of asphyxiation while acting as an agent / officer of
 54 "San Francisco Police Department".
 55 On or around July 14th 2008, plaintiff was falsely arrested for yelling, "Fuck the police!".
 56 Officer Morgado from Southern Station in San Francisco, along with his partner stated,
 57 "If you yell, "Fuck the police, you go to jail." This is clearly a first amendment violation.

Complaint
I. Intentional Tort, contJoseph Victor Lagana
vs. S.F.P.D.Case No. 4:08-cv-03392-
CW

58 Plaintiff did not give the arresting officers consent to search his property. They searched
 59 his property anyway. Upon discovery of the plaintiff's digital camera, Officer Morgado's
 60 partner deleted all photos and videos of the plaintiff's contact and recorded harassment
 61 from/by S.F.P.D. officers. This is destruction of evidence, a federal crime. Plaintiff was
 62 detained for 16 hours for allegedly being drunk in public. Plaintiff was not drunk.
 63 Sheriffs of County Jail #8 let out stumbling drunks hours before the plaintiff whom asked
 64 for a breathalyzer test, blood test or sobriety test from both the arresting officers and the
 65 sheriff's of San Francisco and was refused accordingly.
 66 Plaintiff has suffered emotional distress, a mass amount of medical bills, deprivation of
 67 liberty, and misery as a direct result of the defendant's malicious retaliation to the
 68 plaintiff filing a lawsuit against the defendant.
 69 Plaintiff prays for the relief sought in this action for wage loss, loss of use of property,
 70 hospital and medical expenses, general damages, property damages, loss of earning
 71 capacity, and emotional distress and incompetence in the work force caused by the
 72 defendants.

II. Cause Of Action - Fraud

73 Defendant made representations of material fact which was intentional misrepresentation.
 74 Defendant made false police reports stating that plaintiff was intoxicated on 3 occasions.
 75 Defendant made a false report stating that the plaintiff committed violations of California
 76 Penal Codes 245 (Assault w/ a deadly weapon), 242 (battery), and terrorist threats (unk.
 77 Penal Code), which are felonies and a misdemeanor.
 78 These representations were in fact false, the truth was as follows: Plaintiff was never
 79 intoxicated every time the defendant charged the plaintiff with public intoxication. The
 80 plaintiff was the victim when the defendant arrested him the third occasion, and failed to
 81 arrest the plaintiff's assailant nor write a report against/not in favor of the assailant. The
 82 district attorney of San Francisco rejected every case the S.F.P.D. brought against the
 83 plaintiff due to lack of evidence and the interest of justice. When defendant made the
 84 representations with the intent to defraud and induce plaintiff to act as described in the
 85 above lines. At the time plaintiff acted, plaintiff did not know the representations
 86 were false and believed they were true. Plaintiff acted in justifiable reliance upon the
 87 truth of the representations. Defendant concealed and suppressed material facts as
 88 follows: Defendant failed to provide a sobriety test, blood test, or Breathalyzer test.
 89 Defendant failed to arrest the other party (true assailant) involved in the case plaintiff was
 90 charged with. By telling plaintiff other facts to mislead plaintiff and prevent plaintiff
 91 from discovering the concealed. Defendant made a promise about a material matter
 92 without any intention of performing it as follows:
 93 S.F.P.D. officers have threatened to arrest the plaintiff or stated, "Do you want to go to
 94 jail?" on multiple occasions for him protesting about the S.F.P.D. They never followed
 95 through and this is a scare tactic to silence the plaintiff.
 96 Defendant's promise without any intention of performance was made with the intent to
 97 defraud and induce plaintiff to rely upon it and to act as described in the above lines. At
 98 the time plaintiff acted, plaintiff was unaware of defendant's intention not to perform the
 99 promise. Plaintiff acted in justifiable reliance upon the promise.
 100 The relief sought in this complaint is within the jurisdiction of this court because this was
 101 a simple matter and it gained Federal court jurisdiction because the defendant has acted in

Complaint

II. Cause of Action - Fraud cont.

cscisif

case No. 4:08-cv-03392-cw

102a malicious manner after filing and caused serious injury to the plaintiff to cause him to
103make errors in his subsequent filings. Plaintiff prays for compensatory damages, punitive
104damages, exemplary damages, in the amount of \$308,000,000 and injunctive relief in the
105form of forcing the defendant "City and County of San Francisco" to install cameras and
106audio recording devices in all law enforcement vehicles in the City and County of San
107Francisco in order to deter future abuse of detainees while in custody.

Complaint

JOSEPH VICTOR LAGANA VS S.F.P.D.C.C.S.F.
Case No. 4:08-CV-03392-CW
III. Cause of Action - General Negligence

1 S.F.P.D. neglected to arrest the "Ross Stores" manager/employee that assaulted the
2 plaintiff with a lit cigarette butt directly in-front of an S.F.P.D. officer.
3 Plaintiff has obtained a picture of the employee and positively ID' the assailant.
4 According to CPC 142. (a) Any peace officer who has the authority to receive or arrest a
5 person charged with a criminal offense and willfully refuses to receive or arrest that
6 person shall be punished by a fine not exceeding ten thousand dollars (\$10,000), or by
7 imprisonment in the state prison, or in a county jail not exceeding one year, or both that
8 fine and imprisonment.
9 On the third occasion plaintiff was arrested by the defendant S.F.P.D., his property was
10 left in the streets and not retrieved by the S.F.P.D. whom neglected his property to be
11 looted by locals.
12 S.F.P.D. neglected to respect the plaintiff's constitutional rights on multiple occasions.
13 All government law enforcement take an oath to protect, respect, and uphold the U.S.
14 Constitution, and regardless if it costs them a potential case. S.F.P.D. has neglected to
15 suspend or arrest Officers "Toomey", "Reyes", and L. Bertrand" although they
16 frequently violate the civil and constitutional rights of the plaintiff and harrass him.
17 Officer "L. Bertrand" (Star number 414) indefinitely should have been arrested for his
18 malicious and oppressive actions against the plaintiff while on duty for the S.F.P.D. The
19 S.F.P.D., the District Attorney's Office of San Francisco, and the Office of Citizen
20 Complaints have failed to take any action against Officer "L. Bertrand". On or around
21 July 17th 2008, Officer "L. Bertrand" detained the plaintiff for almost 30 minutes for
22 protesting about the S.F.P.D. in Union Square on 4th and Markets Streets of San
23 Francisco, CA and searched and seized the plaintiff's property without the plaintiff's
24 consent. Clearly a 4th Amendment right violation by the defendant while a case was
25 pending in Superior Court of San Francisco. Defendant is in contempt of court for
26 detaining the plaintiff while returning home from court.

Joseph Victor Lagana
Under perjury the foregoing is true
and correct
Signed & Dated by Plaintiff 8/12/08
Joseph Victor Lagana

JS 44 (Rev. 12/07) (and rev 1-16-08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

JOSEPH VICTOR LAGANA

DEFENDANTS

"SAN FRANCISCO POLICE DEPARTMENT" &
"CITY AND COUNTY OF SAN FRANCISCO"

(b) County of Residence of First Listed Plaintiff **LOS ANGELES**
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant **SAN FRANCISCO**
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

5622 STROHM AVE
NORTH HOLLYWOOD, CA 91601
818-769-0300
josephvl@yahoo.com Pro Se

Attorneys (If Known)

ANDREW GSCHWIND, STATE BAR #231700
CITY ATTORNEY'S OFFICE - FOX PLAZA
1390 MARKET ST. 6TH FLOOR SAN FRANCISCO, CA 94102-5408

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) SOCIAL SECURITY <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 FEDERAL TAX SUITS
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input checked="" type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
US STATE CODE TITLE 42 SECTION 1983, Civil action for deprivation of rights

Brief description of cause:

1st, 4th, 5th, 6th, and 14th Amendment rights protected by the Constitution have been violated by the defendant many times

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$ 308,000,000** ☐ CHECK YES only if demanded in complaint: **JURY DEMAND: ☒ Yes ☐ No**

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE". Superior Court County of San Francisco CGC-08-475803

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)

(PLACE AND "X" IN ONE BOX ONLY)

☒ SAN FRANCISCO/OAKLAND

☐ SAN JOSE

DATE

SIGNATURE OF ATTORNEY OF RECORD